



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1996

Mr. Michael R. Davis
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0036

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28462.

The Department of Public Safety (the "department") received a request for all documents in its possession relating to two troopers in its employ. You sent this office documents from one trooper's personnel file and assert that they are representative of the documents in the other trooper's file. These documents consist of two types of "Performance Evaluation Reports," designated Pe-23 and Pe-24. You claim that these forms are protected from disclosure under sections 552.101, 552.102, 552.108, and 552.111.

Sections 552.101 and 552.102 both apply the same standard for determining whether information is confidential under common-law privacy. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin, 1983, writ ref'd n.r.e.) Information may be withheld on the basis of common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). These evaluation reports are neither intimate nor embarrassing; they are of interest to the public and may not be withheld under sections 552.101 and 552.102.

Section 552.108, the law enforcement exception, excepts from required public disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters

relating to law enforcement or prosecution.” When the law enforcement exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). You claim that disclosure of these personnel evaluations would impair the effective management of the organization by having a “chilling effect on the supervisor’s ability to give a frank appraisal of an individual under his/her command.” These forms are personnel forms having nothing to do with law enforcement. Moreover, you have not explained nor is it apparent from the documents how their release will unduly interfere with law enforcement or crime prevention.

With respect to your arguments under section 552.111, this office concluded in Open Records Decision No. 615 (1993) that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Open Records Decision No. 615 (1993) at 5. An agency’s policymaking functions, however, do not encompass internal administrative or personnel matters. *Id.* at 5-6. Accordingly, we believe that these forms may not be withheld under section 552.111 or any of the other exceptions that you claim.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

¹We caution, however, that federal law may prohibit disclosure of the social security numbers included in this request for records. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the department should ensure that the information is not confidential under this federal statute. In addition, for requests received after August 31, 1995, you must withhold a peace officer’s social security number under section 552.117 of the Government Code. Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. ch. 1035, § 9, 1995 Tex. Sess. Law Serv. 5127 (Vernon).

LRD/rho

Ref.: ID# 28462

Enclosures: Submitted documents

cc: Mr. Walter M. Reaves, Jr.
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(w/o enclosure)